IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7575 OF 2005

Sau Anita Shivaji Dhane Applicant

versus

State of Maharashtra Respondent

Mr.Milind Deshmukh for applicant.
Mr.R.Y.Mirza, APP for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 25th November 2005

PC :

1. Heard Shri Deshmukh for the applicant and Mr.Mirza, APP for the respondent.

2. One Sharda Kadam complained to the Velapur Police Station that the husband of the present applicant outraged her modesty and along with others inflicted abuses and insults which amount to atrocities and a punishable offence under the S.C. and S.T. (Prevention of Atrocities Act), 1989.

3. All that the applicant is alleged to have done, is that at the only meeting at a public

tap, with the complainant, she hurled abuses at her. Applicant is arrayed as accused on this allegation.

4. Apprehending her arrest the applicant had moved the learned Additional Sessions Judge and she was enlarged on bail in the event of her arrest. An order to that effect is passed on 9th August 2005. Thereafter, it is contended that the period/duration of anticipatory bail being over, she surrendered to custody of Court and preferred Criminal Miscellaneous Application No.105/2005 for grant of regular bail. The application has been rejected by the learned Judge on 21st September 2005. While rejecting the said application, the learned Judge observes that the applicant has not made out a case of surrender before Police authority in the crime before furnishing anticipatory bail nor has she submitted any application for surrender before the Court. In these circumstances, her application for regular bail under section 439 cannot be considered. In the opinion of the learned Additional Sessions Judge, the prerequisite for regular bail under section 439 is not complied with. The application was rejected only on this ground.

5. In my view, the learned Sessions Judge ought to have noticed the specific averment made in Criminal Miscellaneous Application No.105/2005 which was under consideration. The averment is clear inasmuch as the applicant stated that she was granted anticipatory bail till 20th August 2005 with a direction to file regular bail application. She was arrested by Akluj Police Station on 16th August 2005 and released as per the order of Court. Since the duration of anticipatory bail was till 20th August 2005, she presented an application for regular bail. it is that application with the averments as aforesaid which was under consideration of the learned Sessions Judge.

6. Having observed that the applicant is not disentitled to bail on merits, in my view, the learned Judge was in clear error in rejecting the application for regular bail. The learned Judge ought to have appreciated that the application was filed in pursuance of has earlier direction. In that view of the matter, the order of the learned Additional Sessions Judge is set aside and substituted by following order.

7. (i) The applicant shall be enlarged on bail in connection with C.R.No.40/2005 registered with Velapur Police Station, subject to furnishing a personal bond of Rs.15,000/- (Rs.Fifteen thousand only) with one solvent surety in the like sum;

(ii) The bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(iii) The applicant shall co-operate with the Trial Court for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

(iv) Any observation/s made in this order shall not be constructed as any finding or any expression of opinion on the merits of the case at the time of trial.

(v) Application is disposed of in above terms.

(S.C.DHARMADHIKARI, J.)